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STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 92-E-0536- In the Matter of the Rules and Regulations of
the Public Service Commission, Contained in
16NYCRR, in Relation to Complaint
Procedures--Appeal by Midstate
Management/Forest Hills Park of the Informal
Decision Rendered in Favor of Consolidated
Edison Company of New York, Inc. filed in C
26358 (E274778)

COMMISSION DETERMINATION
(Issued and Effective November 22, 1993)

This is an appeal by Midstate Management/Forest Hills Park, complainant, to the Commission from a decision by staff of the Consumer Services Division concerning the peak demand portion of an estimated bill rendered by Consolidated Edison Company of New York, Inc., the utility, after the utility was unable to gain access on the regular reading day. The bill in dispute, for the monthly period ending July 10, 1991, was estimated based on recorded energy and peak demand for the same period the prior year. When access was obtained for the next monthly bill of August 1991, the actual reading of the demand register equaled the estimated demand. Urac, representing complainant, claims the utility is obligated to reduce the previous estimated demand by 5% of the subsequently obtained actual demand. Staff determined

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that the disputed bill did not meet the definition of a backbill as defined by Commission regulations, and that the disputed demand charges were properly rendered according to Commission regulations.

For the reasons stated below, we deny complainant's appeal and uphold staff's decision.

SUMMARY OF FACTS

(1) Complainant's account is for electricity at 42-42 80 Street, Queens, New York. The account is billed on the utility's Service Classification No. 8, Multiple Dwellings-Redistribution, which includes a monthly demand charge.

(2) By letter dated January 31, 1992, Urac filed a complaint with the Consumer Services Division, disputing the utility's decision not to reduce the estimated demand of 192 kw (kilowatts) on complainant's July 10, 1991 bill. Urac argued that once the utility obtains an actual reading it is "obligated to reduce the previous estimated demand by five percent of that subsequent actual" and that its failure to do so results in billing for two months at the peak demand for the period, not the monthly peak demand for each month. Urac also requested that staff, if it did not agree with its position, provide utility meter reading information for the period of May 1991 to September 1991 and a copy of the utility's Commercial Operations Reporting

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System (CORS)-Case Notes Reports for complainant's account.

(3) Staff's review of the complaint found there was no basis to reduce the disputed estimated demand and notified Urac, by letter dated May 12, 1992, that complainant was properly billed consistent with the informal review decision in the complaint of Beekman Downtown Hospital.

(4) Urac subsequently requested an informal hearing by letter dated May 16, 1992, stating that the complaint file contains sufficient information of its contentions.¹

(5) In his response to Urac's hearing request, the informal hearing supervisor noted that the regulation referred to in the complaint, 16 NYCRR Section 13.9(d)(3), applies to estimated demands that are subsequently rebilled and that no such rebilling occurred or was required in the instant complaint.² Thus, the

¹ Urac also noted that the information request made in its initial letter to the Consumer Services Division was ignored and asked that the information be provided prior to the scheduling of the hearing. The meter reading information, retained by the utility on optical disk, that Urac requested (and staff neglected to send) for the period of May 1991 to January 1991 has been sent to Urac. The other information requested by Urac, the CORS-Case Notes for complainant's account, is not being provided since it is not contained in the case file and was not used by staff or the informal hearing supervisor to reach a determination.

² Section 13.9(d)(3) of 16 NYCRR states, "No revised demand shall exceed 95 percent of the subsequent actual demand, unless the utility has, along with the estimated demand bill, offered a special appointment to read the meter, and the customer failed to

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informal hearing supervisor informed Urac, by letter dated June 3, 1992, that rebilling was unwarranted.

(6) By letter dated June 8, 1992, Urac appealed staff's decision. In its appeal, Urac disagrees with the informal hearing supervisor's interpretation of the applicable regulation and claims that it was denied its hearing request and, consequently, deprived of the right to present its case.³

DETERMINATION

The issue in this case is whether the utility billed complainant in accordance with Commission regulations. Urac's interpretation of 16 NYCRR 13.9(d)(3) is incorrect because it overlooks the fact

arrange and keep such appointment, in which case the estimated demand may be revised up to the level of the subsequent actual demand." The monthly bill of July 10, 1990 was for recorded energy of 87,360 kwh and demand of 192 kw. The bill of August 8, 1991, which followed the disputed bill, was for recorded energy of 84,240 kwh and demand of 192 kw.

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Urac, representing Beekman Downtown Hospital, also appealed the informal review decision referred to in staff's initial determination of May 12, 1992 in the present complaint. By letter dated August 6, 1992, staff advised Urac that its appeal in the present complaint was being combined with its appeal in Beekman Downtown Hospital since the issues raised are the same. However, apparently due to an oversight, the cases were not combined. A separate Commission determination, sustaining the hearing officer's decision, was recently issued in the appeal of Beekman Downtown Hospital [In the Matter of the Complaint of Beekman Downtown Hospital against Consolidated Edison Consolidated of New York, Inc. (E269668), Case 26358, (Issued June 28, 1993)].

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that this regulation pertains to demands that have been revised. Urac specifically contends that 16 NYCRR 13.9(d)(3) requires that once the utility obtains a meter reading, it must reduce the previous estimated demand by five percent of the subsequent actual reading, and that the utility's failure to do so results in billing two months at the peak demand, not the monthly peak demand. Urac did not submit any arguments on appeal or at any prior point to support this interpretation of the regulation, nor does it indicate that any facts are at issue.

Clearly, 16 NYCRR 13.9(d)(3) refers to demands that have been revised or adjusted. If this precondition is not met, the regulation does not apply. There is no requirement in 16 NYCRR 13.9(d)(3), as Urac appears to argue, that an estimated demand must be revised based on a subsequent actual reading regardless of the accuracy of the estimate.

The applicable regulation for reducing an estimated demand is 16 NYCRR 13.9(d)(4), which requires the utility to "...downwardly revise any estimated demand that exceeds the subsequent actual demand, within 30 calendar days after such actual demand was obtained." This regulation does not require the downward revision of an estimated demand when the subsequent actual demand equals or exceeds the estimated demand, nor is there any logical reason to reduce the estimate in such a case.

In the instant complaint, the utility made two attempts to read

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complainant's meter the day following the regular reading date of July 10, 1991 and was unable to gain access. By doing so, the utility fulfilled its obligation under Section 13.8(a)(4) to make another reading attempt,⁴ and it then proceeded to estimate the disputed bill based on the actual demand and energy for the same period the prior year.⁵ When the next month's actual reading was equal to the estimated demand, there was no obligation for the utility to revise the estimated billing. Thus, complainant's bill of July 10, 1991 was properly rendered. This finding is consistent with the determination in the Beekman Downtown Hospital case, where the Commission affirmed that 16 NYCRR 13.9(d)(4) sets forth when an estimated demand must be revised and 16 NYCRR 13.9(d)(3) sets forth the maximum limit of the

⁴. 16 NYCRR section 13.8(a)(4) Meter Reading and Estimated Bills: Meter Reading "Where a utility did not obtain an actual reading from the meter(s) of a demand account at the time of a regularly scheduled or follow-up reading attempt, the utility shall make another reading attempt as soon as possible and within seven calendar days after its last attempt." The utility's optical disk records indicate that two unsuccessful attempts were made to read complainant's meter the day after the scheduled reading of July 10, 1991 before the disputed estimated bill was issued for 192 kw and 81,840 kwh (kilowatthours).

⁵. 16 NYCRR Section 13.8(b)(2) Estimated Bills "Every estimated bill shall be calculated in accordance with an established formula or methodology which shall take into account the best available relevant factors for determining the customer's energy usage and, if applicable, demand usage."

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revision.

Regarding Urac's request for an informal hearing, Urac properly asserts that the informal hearing supervisor's reply denied his request. However, this denial was accompanied by a substantive decision on the merits. Urac stated in its letter requesting the hearing that the complaint contains sufficient information of its contentions, and, as stated above, did not submit any arguments in support of its position or dispute the facts concerning the disputed demand bill of July 10, 1991. Urac's complaint is based completely on its interpretation of Commission regulations. Further, even if the utility had not made any subsequent attempts to read complainant's meter, there would have been no grounds to revise the disputed demand because the subsequent actual demand equaled that demand, which attests to the reliability of the utility's demand estimate.

In order to assure that all aspects of this case have been properly addressed, we have thoroughly reviewed the entire complaint file. We determine that the bill in dispute was properly rendered by the utility using the best available information and in accord with the applicable regulations. We therefore, uphold the decision sustaining the billing.